IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

WEDNESDAY, THE 5TH DECEMBER 2007 / 14TH AGRAHAYANA 1929

MFA.No. 890 of 2002(C)

OP(MV)1859/1996 of MOTOR ACCIDENT CLAIMS TRIBUNAL, TIRUR
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APPELLANT: 3RD RESPONDENT:

THE ORIENTAL INSURANCE COMPANY LIMITED,
TIRUR NOW REPRESENTED BY ITS ASSISTANT MANAGER,
REGIONAL OFFICE, METRO PALACE, KOCHI-18.

BY ADV. SRI.MATHEWS JACOB

RESPONDENT: APPLICANT:

KOZHISSERI SAFIYA, W/O. AZEEZ,
THIRUTHUMMAL HOUSE, VELLIMMUKKU P.O.,
MALAPPURAM DISTRICT-676 317.
(NO RELIEFS ARE CLAIMED AGAINST THE RESPONDENTS 1 & 2 AND HENCE THEY ARE NOT MADE PARTIES IN THIS APPEAL).

BY ADV. SRI.A.KRISHNAN

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 05/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

ORDER ON C.M.P.NO.6423/2002 IN M.F.A.NO.890/2002

DISMISSED

5/12/2007 **SD/- J.B.KOSHY, JUDGE**

SD/- K.HEMA, JUDGE

/TRUE COPY/

P.S.TO JUDGE

KSS

J.B. KOSHY & K. HEMA, JJ.

M.F.A. No. 890 of 2002

Dated this 5th day of December, 2007

JUDGMENT

Koshy,J:

This appeal is filed by the Insurance company. A 24 year old young girl, who was a tailor by profession, met with a motor accident on 6.11.1994. The Tribunal assessed her income as Rs.2000/- per month. Her index finger of right hand was amputated and the thumb was fractured compositedly. According to her, she was unable to do tailoring work. In the absence of production of disability certificate, Tribunal considered the percentage of loss of earning capacity fixed statutorily under the Workmen's Compensation Act. For amputation of index finger it is 11%. For loss of thumb it is 30%. According to the Tribunal, he personally examined the claimant and found that her index finger was severed at the middle phallanx and practically there was total disablement in the case of thumb as it is completely useless as dystal phallanx of thumb was severed. Tribunal, thus, assessed the total percentage of disability at 41%. We are of the view that since thumb was not actually amputated but fractured and it

was re-fixed and the disability can be fixed at 24%. If that be so, permanent disability will be 35%. In that case, the compensation will be Rs.1,42,800/- (Rs.2000x12x17x35/100) instead of Rs.1,77,566/-. The compensation granted on other heads together was Rs.22,000/-. We are of the opinion that it isjust and reasonable. Therefore, the total compensation payable will be Rs.1,64,800/- instead of Rs.1,99,600/- as awarded by the Tribunal. The above amount (i.e. Rs.1,64,800/-) should be deposited by the Insurance Company with the rate of interest and proportionate cost as fixed by the Tribunal after deducting he amount already paid.

Appeal is partly allowed.

J.B. KOSHY, JUDGE.

K. HEMA, JUDGE.

Krs.

J.B. KOSHY & K. HEMA, JJ.

M.F.A. No. 890 of 2002

Dated this 5th day of December, 2007

JUDGMENT